

KASOWITZ, BENSON, TORRES &

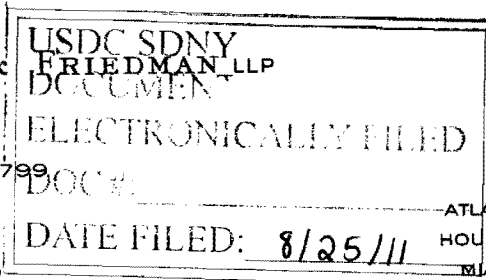
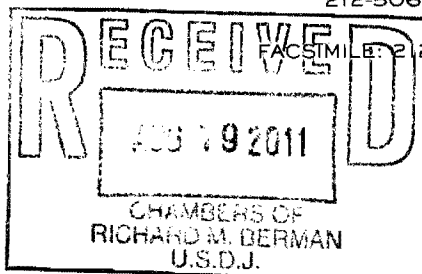
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August 18, 2011

BY FEDEX

The Honorable Richard M. Berman
United States District Court Judge
United States District Court for the Southern District of New York
500 Pearl Street
New York, New York 10007

MEMO ENDORSED
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Re: *Cahoon, et al. v. Bayerische Hypo- und Vereinsbank AG, et al.*, Case No. 11-CV-1891

Dear Judge Berman:

We represent defendants (collectively "HVB") in the above-referenced case. We submit this letter to request an extension of time for completion of discovery in this matter until February 28, 2012. Pursuant to the Court's initial Case Management Plan (Dkt. 12), the deadline for the completion of discovery is currently October 3, 2011. No prior requests for an extension or adjournment of the discovery deadline have been made. All parties consent to this request.

When the parties submitted their proposed case management plan, we jointly requested in that submission a period of one year following decision on HVB's motion to dismiss, which was still being briefed, to complete discovery. There was no discussion of that proposal at the initial conference on May 31, 2011; however, the so-ordered Case Management Plan issued by the Court later that day set October 3, 2011 as the discovery end date. As explained below, we are concerned that this date does not provide sufficient time to conduct discovery in this matter.

We have been counsel to HVB since March 2009. This is not the first claim of this nature we have litigated for HVB (including cases before Judge Gardephe and Judge Crotty), are there therefore in a position to proceed efficiently.

HVB served Initial Disclosures on June 9, 2011. We have also propounded requests for the production of documents to all plaintiffs, interrogatories to all plaintiffs, and notices of deposition to the plaintiffs. We have also provided notice of several third-party depositions, and anticipate six or more third-party depositions to be taken by HVB (including of the alleged conspirators from KPMG and Presidio that marketed and sold the transactions at issue in the case to the plaintiffs, and that are alleged to have made fraudulent misrepresentations; of alleged conspirator Sidley Austin,

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which provided a legal opinion letter about the tax-implications of the transactions; of three individuals who purchased the transaction at the same time as plaintiff Cahoon and were co-plaintiffs with Cahoon in a 2004 lawsuit on the same subject; and of the plaintiffs' legal and accounting advisors with respect to the purchase of the transactions). In addition, because none of the HVB employees involved in the transactions at issue in the case is still employed by HVB, discovery from those individuals by HVB will require third-party depositions as well. The aforementioned witnesses reside in California, Florida, Georgia, Maine and elsewhere around the United States. We also seek documents from the third parties regarding communications with the plaintiffs and their advisors, and regarding the marketing of the transaction at issue to the plaintiffs, among other things. In addition to the notices of third-party subpoenas we have issued pursuant to Rule 45, Fed. R. Civ. P., we have also been in contact with counsel for KPMG and Presidio Advisors, LLC regarding the gathering of documents from those entities.

We are also advised by plaintiffs' counsel that they intend to take a number of depositions, including of former employees of HVB and principals of Presidio. Presidio's principals are federally incarcerated. Most of the depositions taken by the parties will involve extensive travel and accommodating the schedules of multiple attorneys and the witnesses.

This law firm maintains an electronic database of approximately 47,000 documents gathered by HVB relating to tax shelter cases. Although we have not yet received document requests from any plaintiff, we have been reviewing the database in anticipation of plaintiffs' document requests. We will respond formally to plaintiffs' documents demands when they are received, and anticipate making objections to the scope of that demand in addition to producing responsive documents.

Plaintiffs did not serve their initial disclosures until July 27, 2011. They list approximately 100 persons likely to have discoverable information that plaintiffs may use to support their claims. Notably, those disclosures failed to list the person who, we have since learned from plaintiffs, conducted the negotiations for the transaction at issue in the case on behalf of plaintiff Sanchez.

Responses to our document requests are due to us in four days. It is not clear if we will receive documents at the same time as we receive formal responses to our document requests and whether disputes will arise.

Additionally, expert witnesses are typically retained in these cases, another matter which affects the timing of discovery.

Based on the foregoing, we respectfully request that the time for discovery be extended until February 28, 2012. The extension requested still provides for a compressed time period for the amount of work involved in discovery in this case, especially given the delays occasioned by the plaintiffs thus far. As noted above, plaintiffs consent to this request.

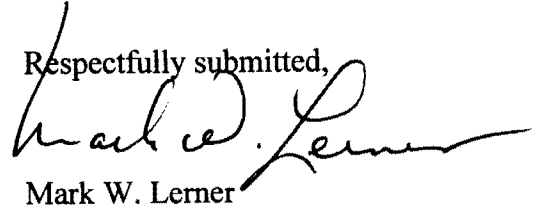
Finally, unlike at the time of the initial conference, our motion to dismiss on statute of limitations grounds is now fully briefed and on submission with the Court.

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Thank you for your consideration of this request.

Respectfully submitted,



Mark W. Lerner

cc: Brian G. Isaacson, Esq. (*by e-mail*)
Mark W. Wilson (*by e-mail*)
Edmundo O. Ramirez, Esq. (*by e-mail*)
Jointly counsel for all plaintiffs

The discovery deadline is extended to 12/2/11.	
SO ORDERED: Date: 8/24/11	 Richard M. Berman, U.S.D.J.